




實施基本法第二十三條

Proposals to implement Article 23 of the Basic Law

諮詢文件摘要

Summary of Consultation Document

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實施基本法第二十三條

諮詢文件摘要

保安局

二零零二年九月

歡迎你提出意見

政府向來十分重視公眾的意見。我們現已擬備實施基本法第二十三條的建議，並將建議撮述於本文件作公眾諮詢。

我們懇切期待公眾對建議提出意見。歡迎將有關意見於2002年12月24日或以前，以下列任何一種方式送交保安局－

- 郵遞地址 ： 香港中環下亞厘畢道
 中區政府合署東座6樓
 保安局助理秘書長F2
- 傳真號碼 ： 2521 2848
- 電郵地址 ： bl23@sb.gov.hk

請提交意見或建議的人士注意，除非閣下要求政府將有關意見和建議的任何部分或閣下的身分保密，否則政府會在適當的情況下，發布閣下的意見和建議的全部或部分，以及閣下的身分。

本摘要以及詳細的諮詢文件現於各民政事務處派發，並刊載於保安局網頁<http://www.info.gov.hk/sb>和政府新聞處網頁<http://www.info.gov.hk/cindex.htm>供公眾瀏覽。為減少消耗紙張，我們鼓勵市民盡量在網頁瀏覽諮詢文件。

如有查詢，請致電 2810 2593 與保安局聯絡。

背景

《基本法》第二十三條訂明，香港特別行政區（香港特區）“應自行立法禁止任何叛國、分裂國家、煽動叛亂、顛覆中央人民政府及竊取國家機密的行為，禁止外國的政治性組織或團體在香港特別行政區進行政治活動，禁止香港特別行政區的政治性組織或團體與外國的政治性組織或團體建立聯繫。”

2. 《基本法》第二條訂明，香港特別行政區實行高度自治，第五條又訂明，香港特別行政區不實行社會主義制度和政策，因此保護國家根本利益和國家安全的全國性法律不在香港特區公布實施。香港特區有實際和法律責任實施第二十三條。

3. 每個國家均訂有法例保障其主權、領土完整、統一及國家安全。國家保護其公民免受外敵侵犯，確保公民在一個安穩、太平及有秩序的社會生活，追求理想，因此公民對國家負效忠的義務作為回報，這是放諸四海皆準的原則。第二十三條的旨意，就是以法律禁止任何有損國家主權、領土完整、統一及國家安全的行為。

4. 第二十三條所述部分罪行，現行法例已有規定。《刑事罪行條例》（第200章）第I和II部分別處理叛逆（現時有關條例中並沒有使用

“叛國”一詞）和煽動罪行。關於保護官方資料方面，《官方機密條例》（第521章）處理諜報和非法披露官方資料等罪行。《社團條例》（第151章）規管的事宜，則包括外國政治性組織的活動和與該等組織的聯繫。

指導原則

5. 《基本法》訂明香港特區沿用普通法制度，因此第二十三條的實施，應盡量建基於現行的法例。我們亦已考慮下列指導原則－

- （一）必須全面落實《基本法》的規定，包括該條第二十三條訂明必須禁止的行為；以及其他在第三章的有關條文，特別是保障香港居民某些基本權利和自由的第二十七條，以及第三十九條。第三十九條訂明《公民權利和政治權利國際公約》及《經濟、社會與文化權利的國際公約》適用於香港的有關規定繼續有效，通過香港特區的法律予以實施；
- （二）必須充分保障國家的根本利益，即主權、領土完整、統一及國家安全；以及

- (三) 必須確保落實第二十三條的本地法例內，所有罪行均盡量清楚和嚴謹訂明，以免生歧義或抵觸《基本法》所保障的基本權利和自由。

建議

叛國

6. 叛國指背叛自己的國家。訂立該罪行所須保障的利益為中華人民共和國整體的主權、領土完整和安全，以及中華人民共和國政府。《中華人民共和國刑法》中的叛國罪是指中國公民與外國、或境外的組織或個人相勾結，進行危害中華人民共和國的主權、領土完整和安全的行為。叛國罪基本上是涉及國外因素的危害國家安全罪行，而須保障的法律權益是國家外在的地位。

7. 在研究過現行的叛逆罪行、中華人民共和國的刑法和其他司法管轄區的相關法律後，我們建議修訂和改善《刑事罪行條例》第I部有關叛逆的條文，把實質罪行局限於以下行為－

(一) 與外國人聯手發動戰爭，旨在－

(i) 推翻中華人民共和國政府；或

- (ii) 以武力或強制手段強迫中華人民共和國政府改變其政策或措施；或
 - (iii) 向中華人民共和國政府施加武力或強制力；或
 - (iv) 向中華人民共和國政府作出恐嚇或威嚇；或
- (二) 鼓動外國人入侵中華人民共和國；或
- (三) 以任何方式協助與中華人民共和國交戰的公敵。

我們也建議將企圖干犯、協助和教唆、慫使和促使他人干犯實質罪行及串謀干犯實質罪行這些源於普通法的初步及預備罪行，以及隱匿叛國（即知道另一人犯了叛國罪而沒有舉報）編纂為成文法例。

8. 我們建議廢除現行“叛逆性質的罪行”和襲擊君主的罪行。

分裂國家

9. 維護國家領土完整和統一是維護國家福祉的命脈。若以武力或其他嚴重非法手段破壞領土完整，戰爭便差不多一定會發生。香港特區現時沒有一項稱為“分裂國家”的罪行。為保障國家領土完整和統一，我們建議訂立分裂國家的特

定罪行，規定以發動戰爭、或以武力、威脅使用武力、或以其他嚴重非法手段－

(一) 把中華人民共和國一部分從其主權中分離出去；或

(二) 抗拒中央人民政府對中華人民共和國一部分行使主權，

即屬犯罪。我們也建議將企圖干犯、協助和教唆、慫使和促使他人干犯分裂國家的實質罪行，以及串謀干犯該實質罪行這些初步或預備罪行，訂為特定罪行。

煽動叛亂

10. 在表達自由，特別是提出不同意見的權利，被一致公認是現代民主社會的基本權利的同時，《公民權利和政治權利國際公約》特別訂明表達的自由並非是絕對的，而是附有特別的義務和責任。而基本的國家安全利益以及國家的穩定，受到口頭或書面通訊（包括電子通訊）嚴重威脅的可能性，亦是廣受肯定的。有關的例子包括煽動他人干犯危害國家安全罪行的言論。因此，按照《公民權利和政治權利國際公約》，表達的自由可基於特定的原因，例如國家安全，受到約制。很多司法管轄區，包括最自由和民主的社會，仍將煽惑罪保留為嚴重的刑事罪行。故

此，我們仍然需要訂定煽動叛亂罪行，以保護國家和主要機構，免受破壞穩定的通訊所侵害。

11. 我們建議把現行的煽動罪的定義收窄，任何人—

(一) 煽動他人干犯叛國、分裂國家或顛覆的實質罪行；或

(二) 煽動他人製造嚴重危害國家或香港特區穩定的暴力事件或公眾騷亂，

即屬犯罪。

12. 在煽動叛亂罪涵蓋一些威脅國家安全和穩定的通訊的同時，亦有需要處理煽動刊物的問題。不過，以刊物為對象的罪行，是對表達自由的直接限制，因此必須作狹義的界定，以符合《公民權利和政治權利國際公約》所要求的必要和相稱的準則。若處理煽動刊物的行為是煽動行為的一部分時，有關行為已受上文第11段的罪行所涵蓋。但是，如某人為謀利等其他原因處理煽動刊物，但同時清楚知道刊物會煽動危害國家安全的罪行；則這類處理刊物的行為，也應被視為刑事罪行。

13. 我們建議收窄現行“煽動刊物”的定義，規定只有當刊物會煽動他人干犯叛國、分裂國家或顛覆的實質罪行的時候，才可被視作煽動刊物，並規定干犯下列行為，即在知情或有合理理由懷疑某刊物是煽動刊物的情況下一

- (一) 處理該刊物，而沒有合理辯解；或
- (二) 管有該刊物，而沒有合理辯解，

即屬犯罪。

14. 純粹發表意見，或就意見或作為作出報道或評論，均不會列為刑事罪行；除非這些意見、某報道或評論煽動他人以發動戰爭、武力、威脅使用武力、或嚴重非法手段達到某指定目的。這符合《基本法》第三十九條的規定，該條保障發表自由。

顛覆

15. 在保護國家建制的層面，顛覆活動通常是指內部或本地勢力推翻或破壞憲法、根據憲法確立的政府或政府制度的行為。香港特區法例中，並無一項稱為“顛覆”的特定罪行。不過，以暴力推翻政府的行為，仍受現行有關“發動戰爭以廢除君主”的叛逆罪條文涵蓋。

16. 顛覆罪的保護對象，應是國家的根本制度及中華人民共和國政府。我們建議把發動戰爭、或以武力、威脅使用武力、或其他嚴重非法手段－

- (一) 脅迫中華人民共和國政府；或

- (二) 推翻中華人民共和國政府，或廢除中華人民共和國憲法所確立的國家根本制度，

界定為顛覆罪。我們也建議把企圖干犯、協助和教唆、慫使及促使他人干犯實質罪行，以及串謀干犯實質罪行等有關連的初步及預備罪行，訂為法定罪行。

竊取國家機密

17. 一個開放及行動透明度高的政府，有助鼓勵公眾參與公共事務和加強問責性。不過，為了保護國家和人民的安全，並確保政府能夠順利運作，某些資料必須予以保密。我們因此必須制訂法律制裁措施，對付未經授權而取得或披露這類資料的行為。同時，為保障發表意見的自由和資訊自由，我們應只保護那些真正值得受保護的資料，並明確界定保護方法。我們建議保留現有《官方機密條例》的規定，訂明竊取國家機密罪的保護對象如下－

- (一) 就諜報活動而言，受保護的資料應指那些可能會對敵人有用的資料，而有關資料是為了損害中華人民共和國或香港特區的安全或利益而取得或披露的；

(二) 就非法披露而言，屬以下類別的資料應受保護－

- (i) 保安及情報資料；
- (ii) 防務資料；
- (iii) 有關國際關係的資料；
- (iv) 有關中華人民共和國中央與香港特區關係的資料；以及
- (v) 有關犯罪和刑事調查的資料。

18. “諜報活動”一般指取得對國外權力有用和有損國家安全的資料的活動。這類活動在各國均被視為嚴重危害國家安全的罪行，並應該受到嚴懲。相對而言，為了在保護國家安全和提倡開放的政府之間取得平衡，我們認為，對於未經授權披露官方資料的行為，若被披露的屬敏感性質的資料，才應列為刑事罪行。

19. 《官方機密條例》已經為保護國家機密提供良好的基礎。雖然如此，我們仍建議訂立一項新罪行，訂明凡把未經授權而取得的受保護資料，作出未經授權而具損害性的披露，即屬犯罪。

外國政治性組織

20. 現時《社團條例》的條文足以禁止外國政治性組織不當地干預本地的政治事務，因此應

予保留。另一方面，對國家安全構成真正威脅的政治活動，很有可能是有組織性的。在很大程度上，我們可根據現時的《社團條例》禁止這類具威脅性的政治活動。該條例訂明，保安局局長可在為維護國家安全而必要的情況下，宣布香港特區的某個組織為非法組織。

21. 為阻止有組織性進行這類對國家安全構成真正威脅的活動，我們建議可禁制危害國家安全的組織，但只有在根據《公民權利和政治權利國際公約》所訂準則下，有關禁制是維護國家安全、公共安全或公共秩序所需的時候，並且在符合下列其中一項情況，禁制的權力才可行使－

- (一) 該組織的目的或其中一個目的，是從事任何干犯叛國、分裂國家、煽動叛亂、顛覆、或謀報罪的行為；或
- (二) 該組織已經作出、或正企圖作出叛國、分裂國家、煽動叛亂、顛覆或謀報罪的行為；或
- (三) 該組織從屬於某個被中央機關根據國家法律，以該組織危害國家安全為理由，在內地取締的內地組織。

22. 我們建議把組織或支援被禁制組織的活動，以及管理這些組織或身為其幹事，列為罪行。按《公民權利和政治權利國際公約》所訂準則，在有需要的情況下，任何與被禁制組織

有聯繫的組織，均可被宣布為非法組織。

23. 禁制及宣布某組織為非法的決定，會受上訴程序約制。為確保公平，這個程序應分為兩個層次。首先，事實的論點可向一個獨立的審裁處提出上訴；其次，法律的論點可向法院提出上訴。

其他事項

24. 我們必須充分考慮到科技發展以及日益方便的通訊，對域外作為可能帶來的影響。概括來說，我們建議僅在罪行與香港特區有充分關連的情況下，香港特區才應對該罪行擁有司法管轄權；換句話說，有關的作為是由香港特區的永久性居民在海外作出；或該作為與香港特區有特定的“關連”。目前，根據《刑事司法管轄權條例》（第461章），就多項欺詐和不誠實的罪行而言，即使這些罪行並非在香港發生，但只要這些罪行與香港特區有特定的“關連”，香港特區法院便可行使司法管轄權。而在普通法中，企圖干犯、串謀或煽動他人在香港犯罪，即構成香港特區的罪行。我們建議採用普通法和法例的原則，對“關連”作定義。

25. 要應付對國家或香港特區的安全的威脅，我們必須具備有效的調查權力。我們建議增加額外的權力，以處理第二十三條中較嚴重的罪行。

Proposals to implement Article 23 of the Basic Law

Summary of Consultation Document

Security Bureau
September 2002

We welcome your views

The Government has always attached great importance to comments from the public. We have now formulated the proposals to implement Article 23 of the Basic Law as detailed in this document. A summary of the proposals is set out in the following pages for public consultation.

We sincerely invite your views on the proposals. Comments on the proposals are welcomed, by 24 December 2002, as follows —

- by post : Security Bureau
(Attn: AS(F)2, F Division)
6th Floor, East Wing
Central Government Offices
Lower Albert Road
Central
Hong Kong
- by fax : 2521 2848
- by e-mail : b123@sb.gov.hk

Any person submitting views and comments should be aware that the Government may publish

all or part of the views and comments received and disclose the identity of the source in such manner as the Government considers appropriate, unless he/she requests any part of the views and comments and/or his/her identity be treated in confidence.

Copies of this summary and the full consultation document are available at all District Offices, and can be accessed at the Security Bureau website at <http://www.info.gov.hk/sb> or the Government Information Centre website at <http://www.info.gov.hk/eindex.htm>. In an effort to reduce paper consumption, we encourage you to access the consultation document through these websites as far as possible.

For enquiries, please contact the Security Bureau at 2810 2593.

Background

Article 23 of the Basic Law stipulates that the Hong Kong Special Administrative Region (HKSAR) “shall enact laws on its own to prohibit any act of treason, secession, sedition, subversion against the Central People’s Government (CPG), or theft of state secrets, to prohibit foreign political organizations or bodies from conducting political activities in the Region, and to prohibit political organizations or bodies of the Region from establishing ties with foreign political organizations or bodies.”

2. In line with the high degree of autonomy for the HKSAR as provided under Article 2 of the Basic Law, and the guarantee that the socialist system and policies shall not be practised in the HKSAR as set out in Article 5, national laws for the protection of essential interests of the state and national security have not been promulgated in Hong Kong. The HKSAR has both practical and legal obligations to implement Article 23.

3. Every nation has laws to protect its sovereignty, territorial integrity, unity and national security. It is universally accepted that a national owes allegiance to his state, in return for the

protection afforded by the state against foreign aggression, and for the provision of a stable, peaceful and orderly society within which to carry out his pursuits. The intent of Article 23 is to prohibit by law acts that would undermine the sovereignty, territorial integrity, unity and national security of our country.

4. Some of the Article 23 offences are already dealt with under existing legislation. Parts I and II of the Crimes Ordinance (Cap. 200) deal with treason and sedition respectively. Where the protection of official information is concerned, the Official Secrets Ordinance (Cap. 521) deals with spying and unlawful disclosure of official information. The Societies Ordinance (Cap. 151) regulates, *inter alia*, the activities of and ties with foreign political organizations.

Guiding Principles

5. The Basic Law provides for the continuity of the common law system of the HKSAR, and it follows that the implementation of Article 23 should be effected through making use of existing legislation as far as possible. We have also taken into account the following guiding principles —

- (a) the need to meet fully the requirements of the Basic Law, including Article 23 which stipulates the acts to be prohibited; and other relevant provisions in Chapter III, in particular Article 27 which guarantees certain fundamental rights and freedoms of Hong Kong residents, and Article 39 which stipulates, *inter alia*, that the provisions of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), as applied to Hong Kong shall remain in force, and shall be implemented through the laws of the HKSAR;
- (b) the need to protect adequately the State's essential interests, namely sovereignty, territorial integrity, unity and national security; and
- (c) the need to ensure that all offences encompassed by local legislation to implement Article 23 are as clearly and tightly defined as appropriate, so as to avoid uncertainty and the infringement of fundamental rights and freedoms

guaranteed by the Basic Law.

The Proposals

Treason

6. Treason means the betrayal of one's country. The interests to be protected against treason are the sovereignty, territorial integrity and security of the People's Republic of China (PRC) as a whole, and the PRC Government (PRCG). Treason offences under the Criminal Law of the PRC refer to those acts endangering the sovereignty, territorial integrity and security of the PRC committed by a PRC citizen in collusion with a foreign state, or with an organization or individual outside the territory of the PRC. Treason offences are essentially crimes of endangering state security from without and the legal interest to be protected is the external status of the country.

7. Having studied the existing offence of treason, the Criminal Law of the PRC and the relevant provisions in other jurisdictions, we propose to update and improve the treason provisions in Part I of the Crimes Ordinance by restricting the substantive offences to —

- (a) levying war by joining forces with a foreigner to —
 - (i) overturn the PRCG; or
 - (ii) compel the PRCG to change its policy or measures by force or constraint; or
 - (iii) put any force or constraint upon the PRCG; or
 - (iv) intimidate or overawe the PRCG; or
- (b) instigating a foreigner to invade the PRC; or
- (c) assisting by any means a public enemy at war with the PRC.

We also propose to codify the common law inchoate and accomplice offences of attempting, aiding and abetting, counselling and procuring the commission of substantive offences, and conspiring to commit the substantive offences; and also the offence of misprision of treason (i.e. failure to report a known offence of treason).

8. The current treasonable offences and offence of assaults on the sovereign are proposed to be repealed.

Secession

9. Preserving the territorial integrity and unity of a nation lies at the heart of the welfare of a nation. A breach of that integrity by force or other serious unlawful means will almost invariably lead to war. There is at present no offence termed “secession” in the HKSAR. To ensure the protection of territorial integrity and unity of our country, we propose to create a specific offence of secession, making it an offence to —

- (a) withdraw a part of the PRC from its sovereignty; or
- (b) resist the CPG in its exercise of sovereignty over a part of the PRC

by levying war, or by force, threat of force, or other serious unlawful means. The specific inchoate and accomplice offences of attempting, aiding and abetting, counselling and procuring the commission of the substantive secession offence, and conspiring to commit the substantive offence, are also proposed.

Sedition

10. While it is universally accepted that the freedom of expression, in particular the right to voice dissenting opinions, is a fundamental right in modern democratic societies, the ICCPR specifically provides that the freedom of expression is not absolute and carries special duties and responsibilities. It is also widely recognized that the fundamental national security interests and stability of the state may sometimes be seriously endangered by verbal or written communications, including those conveyed electronically. Examples would include a speech inciting others to commit an offence endangering national security. For this reason, the freedom of expression may under the ICCPR be restricted on certain specified grounds, such as national security. Many jurisdictions, including the most liberal and democratic societies, retain sedition as a serious criminal offence. There is therefore a continued need for sedition offences to protect the state and key institutions from stability-threatening communications.

11. We propose to narrow the existing offence of sedition so that it is an offence —

(a) to incite others to commit the

substantive offences of treason, secession or subversion; or

- (b) to incite others to violence or public disorder that seriously endangers the stability of the state or the HKSAR.

12. While the sedition offence should cover one aspect of communications threatening the security and stability of the state, there is also a need to deal with seditious publications. However, offences targetting publications are a direct restriction on the freedom of expression, and should therefore be narrowly defined in order to comply with the necessity and proportionality criteria as required under the ICCPR. If the act of dealing with seditious publications is part of an act of incitement, it may be covered by the offence proposed in paragraph 11 above. However, if someone deals with seditious publications for some other reasons such as profit, while at the same time being fully aware that the publications would incite offences that endanger national security, such dealings should also be suitably regarded as criminal acts.

13. We propose to narrow the existing definition of “seditious publication”. A publication should be regarded as seditious only if it would

incite persons to commit the substantive treason, secession and subversion offences, and that it would be an offence, with knowledge or reasonable suspicion that a publication is seditious,

- (a) to deal with that publication without reasonable excuse; or
- (b) to possess that publication without reasonable excuse.

14. The mere expression of views, or mere reports or commentaries on views or acts, will not be criminalized, unless such expressions, reports or commentaries incite others to achieve a specified purpose through levying war, force, threat of force, or serious unlawful means. This is in compliance with Article 39 of the Basic Law, which enshrines protection of the freedom of expression.

Subversion

15. In the context of the protection of state institutions, subversion is commonly understood to involve overthrowing or undermining the constitution, the constitutionally established government, or system of government by internal or domestic elements. There is no specific offence

of “subversion” in the laws of the HKSAR, although the violent overthrow of the government is covered by the existing treason offence of “levying war to depose the sovereign”.

16. The targets of protection against subversion should be the basic system of the state and the PRCG. We propose to define the offence of subversion as —

- (a) to intimidate the PRCG; or
- (b) to overthrow the PRCG, or to disestablish the basic system of the state as established by the PRC constitution,

by levying war, or by force, threat of force, or by other serious unlawful means. The related inchoate and accomplice offences of attempting, aiding and abetting, counselling and procuring the commission of substantive offences, and conspiring to commit the substantive offences, are also proposed to be codified.

Theft of State Secrets

17. While open government and a high degree of transparency of government actions encourages participation in public affairs and enhances

accountability, some information has of necessity to be kept confidential to protect the security of the country and the people, and to ensure the smooth running of government. There should therefore be legal sanctions against unauthorized access or disclosure of such information. At the same time, in order to safeguard freedom of expression and information, protection should only be afforded to truly deserving categories of information, and the means of protection should be clearly defined. We propose to retain the stipulations of the existing Official Secrets Ordinance, specifying that the targets of protection against the theft of state secrets should be —

- (a) where spying is concerned, information which is likely to be useful to an enemy, and whose obtaining or disclosure is for a purpose prejudicial to the safety or interests of the PRC or the HKSAR;
- (b) where unlawful disclosure is involved, information belonging to the following categories —
 - (i) security and intelligence information;
 - (ii) defence information;
 - (iii) information relating to

international relations;

- (iv) information relating to relations between the Central Authorities of the PRC and the HKSAR; and
- (v) information relating to commission of offences and criminal investigations.

18. “Spying”, which generally refers to the procurement of information useful to a foreign power and prejudicial to state security, is regarded worldwide as a serious national security offence meriting heavy punishment. In contrast, in order to preserve the balance between protecting state security and promoting open government, it is considered that unauthorized disclosure of official information should only be criminalised where the information is of a sensitive nature.

19. The Official Secrets Ordinance already provides a good foundation for protecting state secrets. Nonetheless, we propose to introduce a new offence of unauthorized and damaging disclosure of protected information obtained by unauthorized access.

Foreign Political Organizations

20. The existing provisions in the Societies Ordinance are sufficient to prohibit foreign political organizations from unduly influencing the local political process, and should be retained. On the other hand, political activities that pose genuine threats to national security are likely to be organized. Prohibition of such threatening political activities can be achieved to a large extent under the existing Societies Ordinance, which enables the Secretary for Security to declare an organization within the HKSAR unlawful where this is necessary on national security grounds.

21. To thwart organization of such activities that would genuinely endanger the state, it is proposed that an organization that endangers state security could be proscribed, but only where necessary under the standards of the ICCPR to protect national security, public safety and public order, and where one of the following circumstances exists —

- (a) the objective, or one of the objectives, of the organization is to engage in any act of treason, secession, sedition, subversion, or spying; or

- (b) the organization has committed or attempts to commit any act of treason, secession, sedition, subversion, or spying; or
- (c) the organization is affiliated with a Mainland organization which has been proscribed in the Mainland by the Central Authorities in accordance with national law on the ground that it endangers national security.

22. We propose to make it an offence to organise or support the activities of proscribed organizations, or to manage or to act as an office-bearer for these organizations. An organization which has a connection with a proscribed organization might also be declared as unlawful where necessary under the standards of the ICCPR.

23. The decision to proscribe and to declare an organization unlawful would be subject to an appeal procedure. To ensure fairness, this procedure should involve two levels. First, points of fact may be appealed to an independent tribunal. Secondly, points of law may be appealed to the court.

Others

24. It is necessary to ensure that sufficient account is taken of the possible implications of technological developments and the vastly increased ease of communications on extra-territorial acts. Very broadly, we propose to claim jurisdiction over an offence only where a sufficient nexus with the HKSAR is present, i.e. either the act is committed by a HKSAR permanent resident overseas, or the act has a specified “link” with the HKSAR. At present, under the Criminal Jurisdiction Ordinance (Cap. 461), HKSAR courts already have jurisdiction over various offences of fraud and dishonesty even if they do not take place in Hong Kong, provided there is a specified link with the HKSAR. Also, at common law, an attempt, conspiracy or incitement to commit an offence in Hong Kong is an offence here. We propose to adopt these common law and statutory principles in defining what constitutes a “link”.

25. Effective investigation powers are required to deal with threats to the security or interests of the State or the HKSAR. We propose to provide enhanced powers for dealing with the more serious of the Article 23 offences.

